No. 16105

Vol. 308

United States
Court of Appeals
for the Ninth Circuit

RICHARD C. HOY, as District Director of the Immigration and Naturalization Service, Los Angeles, California, Appellant,

vs.

ARNULFO ROJAS-GUTIERREZ,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division

Phillips & Van Orden Co., Fourth and Berry Sts., San Francisco, Calif.—8-27-58

No. 16105

United States
Court of Appeals
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RICHARD C. HOY, as District Director of the Immigration and Naturalization Service, Los Angeles, California, Appellant,

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Appeal from the United States District Court for the Southern District of California, Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

MARY G. CREUTZ,
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600 Federal Building,
Los Angeles 12, California.

For Appellee:

NEWMAN AND NEWMAN,
PHILIP M. NEWMAN,

354 South Spring Street,
Los Angeles 13, California. [1]*

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* Page numbers appearing at bottom of page of Original Transcript of Record.

In the United States District Court, Southern District of California, Central Division

No. 1152-57 WM

ARNULFO ROJAS-GUTIERREZ, Plaintiff,

vs.

ALBERT DEL GUERCIO, as District Director of the Immigration and Naturalization Service, Los Angeles, California.

PETITION FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT: INJUNCTION

Plaintiff alleges:

I.

That this action arises out of, and is based on the Declaratory Judgment Act (28 U.S.C.A. 2201) and Section 10 of the Administrative Procedure Act (5 U.S.C.A. 1009) (60 Stat. 243).

II.

That the plaintiff is a resident of the County of Los Angeles, State of California.

III.

That the defendant is the District Director of the Immigration and Naturalization Service, Department of Justice, at Los Angeles, California.

IV.

That the plaintiff was the subject of deportation

proceedings before the Immigration and Naturalization Service in Los Angeles, California, which were based on a warrant charging that [2] the plaintiff had been convicted of the crime of burglary prior to his entry into the United States.

That these deportation proceedings were terminated by an order entered by the Assistant Commissioner of Immigration on May 4, 1940 which found the plaintiff not to be deportable.

V.

That the plaintiff was again the subject of deportation proceedings instituted on February 10, 1953 charging the plaintiff with being subject to deportation under Section 241 (a) (11) of the Immigration and Naturalization Act of 1952, in that he had been convicted of a law or regulation relating to the illicit traffic in narcotic drugs (marihuana).

VI.

That on May 12, 1955, the plaintiff filed a petition for naturalization at the office of the Immigration and Naturalization Service, Los Angeles, California.

VII.

That on July 18, 1956 Section 241 (a) (11) of the Immigration and Naturalization Act of 1952 was amended by Public Law 728, 84th Congress (78 Stat. 575) to provide in effect and substance for the deportation of an alien who at any time has been convicted of a violation of, or conspiracy to violate, any law or regulation relating to the illicit possession of, or traffic in narcotic drugs.

VIII.

That on September 28, 1956, the plaintiff was served with an Order to Show Cause by the Immigration and Naturalization Service ordering the plaintiff to Show Cause why he should not be deported from the United States on the charge that he had been convicted of a violation of law relating to the illicit possession of narcotic drugs in violation of Section 241 (a) (11) of the Immigration and Naturalization Act of 1952 as amended. [3]

IX.

That on October 19, 1956 after a hearing, a Special Inquiry Office of the Immigration and Naturalization Service, acting as aforesaid, ordered that the plaintiff be deported from the United States on the charge contained in the Order to Show Cause.

X.

That on March 7, 1957, the Board of Immigration Appeals, United States Department of Justice affirmed the decision of the Special Inquiry Office and dismissed the appeal of the plaintiff.

XI.

That on or about the 25th day of September, 1957 the defendant, acting as aforesaid, and through his subordinates, ordered plaintiff to report to the office of the United States Immigration and Naturalization Service, Department of Justice, for deportation from the United States.

XII.

That by the Order of the Assistant Commissioner of Immigration on May 4, 1948, the plaintiff acquired a status of a non-deportable resident alien and that said status was preserved by Section 405 (a) of the Immigration and Naturalization Act of 1952 (U.S.C.A.) and plaintiff cannot be deprived of said status by the statute relied upon by the defendant for the outstanding order of deportation against the plaintiff.

XIII.

That by the order of the Board of Immigration Appeals on December 2, 1953 terminating deportation proceedings against the plaintiff and therefore holding him to be non-deportable, the plaintiff acquired a status of a non-deportable resident alien, that said status was preserved by Section 405 (a) of the Immigration and Naturalization Act of 1952 and that plaintiff cannot be deprived of the status by the statute relied upon by the defendant for the outstanding order of deportation against the [4] plaintiff.

XIV.

That upon filing a petition for naturalization on May 12, 1955, the plaintiff had a right in the process of acquisition within the provisions of Sections 405 (a) and 405 (b) of the Immigration and Naturalization Act of 1952 that cannot be affected or taken away by the statute relied upon by defendant for the outstanding order of deportation against plaintiff.

XV.

That the order of deportation that is outstanding against the plaintiff issued as aforesaid, is in violation of the provisions of Section 405 (a) of the Immigration and Naturalization Act of 1952 (8 U.S.C.A.) and illegal.

XVI.

That all administrative remedies available to this plaintiff in this matter have been exhausted.

For a Second and Special Cause of Action, the plaintiff alleges:

I.

That plaintiff repleads paragraphs I, II, III, VIII, IX, X, XI, and XVI and incorporated same by reference as if repleaded in this cause of action.

II.

That the order of deportation issued against plaintiff by the defendant on or about September 25, 1957 is based upon an erroneous application of Section 241 (a) (11) of the Immigration and Naturalization Act of 1952 as amended in that said section provides for the deportation of an alien who at any time has been convicted of a violation of any law or regulation relating to the illicit possession of narcotic drugs, when in fact the conviction of this plaintiff to which the order refers except for the possession of marihuana which is not included in this [5] Section under the term narcotic drugs.

III.

That the order of defendant is, therefore, illegal as the conviction as aforesaid is not within the provisions of the Section cited.

Wherefore, plaintiff prays for judgment against defendant:

1. Declaring the order of deportation against the plaintiff to be contrary to law.

2. Enjoining the defendant from proceeding with the deportation of plaintiff under the outstanding order.

NEWMAN & NEWMAN,
/s/ By PHILIP M. NEWMAN. [6]

Duly Verified. [7]

[Endorsed]: Filed October 2, 1957.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, Albert Del Guercio, as District Director of the Los Angeles District, Immigration and Naturalization Service, and in answer to plaintiff's complaint and petition for review, declaratory judgment and injunction on file herein, admits, denies and alleges as follows:

I.

Referring to the allegations contained in para-

graph I of plaintiff's complaint, neither admits nor denies the same, said allegations being conclusions of law.

II.

Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph II.

III.

Defendant admits the allegations contained in paragraph III. [8]

IV.

Defendant admits allegations contained in paragraph IV, except that defendant denies that the order entered by the Assistant Commissioner of Immigration which found the plaintiff not to be deportable was made on May 4, 1940; rather, defendant alleges that such order was entered on May 4, 1948.

V.

Defendant admits the allegations contained in paragraph V. Defendant alleges that on November 2, 1953, the Special Inquiry Officer in such proceedings ordered plaintiff's deportation, but that on December 2, 1953, the Board of Immigration Appeals terminated such Order on the grounds that a conviction for possession of narcotic drugs did not constitute a deportation charge (at that time).

VI.

Defendant admits the allegations contained in paragraph VI.

VII.

Defendant admits the allegations contained in paragraph VII.

VIII.

Defendant admits the allegations contained in paragraph VIII.

IX.

Defendant admits the allegations contained in paragraph IX.

X.

Defendant admits the allegations contained in paragraph X.

XI.

Defendant admits the allegations contained in paragraph XI. However, defendant alleges that, upon the filing of the instant petition, defendant has not and does not intend to take any action to remove plaintiff from the jurisdiction of this Court.

XII.

Defendant denies each and every allegation contained in paragraph XII. [9]

XIII.

Defendant denies each and every allegation contained in paragraph XIII.

XIV.

Defendant denies each and every allegation contained in paragraph XIV.

XV.

Defendant denies each and every allegation contained in paragraph XV.

XVI.

Defendant admits the allegation contained in paragraph XVI. Defendant, in answer to paragraph I of plaintiff's second cause of action, refers to paragraphs I, II, III, VIII, IX, X, XI and XVI of this Answer and incorporates such paragraphs by reference as if herein repleaded.

XVII.

Defendant denies each and every allegation contained in paragraph II of plaintiff's second cause of action.

XVIII.

Defendant denies each and every allegation contained in paragraph III of plaintiff's second cause of action.

Wherefore, defendant prays that plaintiff take nothing by reason of his complaint, that the Court find the Order of Deportation valid and enforceable, and for such other and further relief as to the Court seems proper.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

/s/ MARY G. CREUTZ,
Assistant U. S. Attorney,
Attorneys for Defendant. [10]

Affidavit of Service by Mail Attached. [11]

[Endorsed]: Filed December 2, 1957.

PLAINTIFF'S EXHIBIT No. 1

[Title of District Court and Cause.]

PRE-TRIAL ORDER

The following admissions and agreements of fact are hereby made by the parties of this matter and require no proof:

(1) That in 1948 the plaintiff was the subject of deportation proceedings before the Immigration and Naturalization Service in Los Angeles, California, said proceedings having been based on the charge that the plaintiff had been convicted of the crime of burglary prior to an entry into the United States of America; that on May 4, 1948, the Commissioner of Immigration ordered these proceedings terminated and found the plaintiff not to be deportable.

(2) That in 1953 plaintiff was the subject of deportation proceedings before the Immigration and Naturalization Service which were based upon the convictions of the plaintiff on March 11, 1938, November 13, 1945, and April 8, 1949 for violations of Section 11,160 and 11,500 of the Health

Plaintiff's Exhibit No. 1—(Continued)

& Safety Code of the State of California; that on December 2, 1953, the Board of Immigration Appeals held the plaintiff was non-deportable on these charges and ordered the proceedings terminated.

(3) That on May 12, 1955 the plaintiff herein filed a petition for naturalization with the Immigration and Naturalization Service of Los Angeles, California.

(4) That on July 18, 1956, Section 241 (a) (11) of the Immigration Nationality Act of 1952 (8 U.S.C.A. 1251) (11) was amended to provide in effect and substance for the deportation of an alien who at any time has been convicted of a violation of or conspiracy to violate any law or regulations relating to the illicit possession of, or traffic in narcotic drugs;

(5) That on September 28, 1956 the Immigration and Naturalization Service instituted deportation proceedings against the plaintiff herein;

(6) That on October 19, 1956 after a hearing, a Special Immigration Office of the Immigration and Naturalization Service ordered that the plaintiff be deported from the United States on the charges that he had been convicted of the violations of the Section 11,160 and 11,500 of the Health and Safety Code of the State of California as aforesaid; said Order of deportation being based on Section 241 (a) (11) of the Immigration Nationality Act of 1952 as amended on July 18, 1956 (8 U.S.C.A. 1251) (a) (11); that on March 7, 1957

Plaintiff's Exhibit No. 1—(Continued)

the Board of Immigration Appeals affirmed said order of deportation against the plaintiff and dismissed the appeal of the plaintiff.

(7) That on September 25, 1957, the Immigration and Naturalization Service of Los Angeles, California ordered the plaintiff to report to their office for deportation from the United States of America.

(8) That the plaintiff's convictions by the Superior Court of the State of California in and for the County of Los Angeles on March 11, 1938, November 13, 1945, and on April 8, 1949 of having in his possession the flowering tops and leaves of Indian hemp (Cannabis Sativa) (Marihuana) under the provisions of Section 11,160 and 11,500 of the Health and Safety Code of the State of California.

(9) That on July 18, 1956, Section 241 (a) (11) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. 1251) (a) (11) was amended, effective July 19, 1956, to provide in effect and substance for the deportation of an alien who at any time had been convicted of a violation of, or conspiracy to violate, any law or regulation relating "to the illicit possession of or traffic in narcotic drugs * * *"

(10) That Richard C. Hoy be substituted in place of Albert del Guercio as the defendant in this matter.

Issues of Law

1. Whether the plaintiff herein acquired a status of non-deportability by virtue of the decisions of

Plaintiff's Exhibit No. 1--(Continued)

the Commissioner of Immigration on May 4, 1948 and the Board of Immigration Appeals on December 2, 1953.

2. Whether by filing a petition for naturalization on May 12, 1955 the plaintiff herein had a right in process of acquisition.

3. If the plaintiff acquired a status of non-deportability by virtue of the decision referred to above, whether such status was preserved by the Savings Clause (Section 405) (a) and (b) of the Immigration and Nationality Act of 1952 and the plaintiff cannot be deprived of said status by the amendment of Section 241 (a) (11) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. 1251) (11).

4. If the plaintiff herein had a right in the possession of acquisition by the filing of his naturalization petition on May 12, 1955 and whether that right was preserved by Section 405 (a) and (b) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. 1251).

5. Whether Section 241 (a) (11) of the Immigration and Nationality Act of 1952 as amended (8 U.S.C.A. 1251) (a) (11) as amended includes the substance known as marihuana a "narcotic drug" when referring to "illicit possession of or traffic in narcotic drugs * * *".

Issues of Fact: None

The foregoing admissions of fact have been made

Plaintiff's Exhibit No. 1—(Continued)

by the parties in open court at the pre-trial conference; and issues of fact and law being thereupon stated and agreed to, the Court makes this Order which shall govern the course of the trial unless modified.

Dated: March 3, 1958.

The foregoing pre-trial Order is hereby approved:

NEWMAN & NEWMAN,
/s/ By PHILIP M. NEWMAN,
Attorneys for Plaintiff.

/s/ MARY G. CREUTZ,
Attorneys for Defendant.

March 3, 1958.

/s/ WM. C. MATHES,
Judge of the U. S. District Court.

[Endorsed]: Filed March 3, 1958.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

Appearances: Messrs. Newman & Newman and Philip M. Newman, 354 South Spring Street, Los Angeles 13, California, Attorneys for Plaintiff. Laughlin E. Waters, United States Attorney, Rich-

ard A. Lavine, Assistant U. S. Attorney, Mary G. Creutz, Assistant U. S. Attorney, 600 Federal Building, Los Angeles 12, California, Attorneys for Defendant. [12]

Mathes, District Judge:

Plaintiff, an alien of Mexican nationality, has invoked the jurisdiction of this Court under § 10 of the Administrative Procedure Act [60 Stat. 243 (1946), 5 U.S.C. § 1009] to review administrative proceedings had before the Immigation and Naturalization Service of the Department of Justice which resulted in a final order of the Attorney General that plaintiff be deported from the United States. [See Shaughnessy v. Pedreiro, 349 U.S. 48 (1955); cf. Kessler v. Strecker, 307 U.S. 22, 34-35 (1939).]

The case has been submitted for decision upon an agreed statement of facts set forth in the pre-trial conference order. In 1948 plaintiff was before the Immigration and Naturalization Service in deportation proceedings based upon the charge that prior to entry into the United States he had been convicted of the crime of burglary. On May 4, 1948, the Commissioner of Immigration found plaintiff not to be deportable and ordered the deportation proceedings terminated.

In 1953 plaintiff was again the subject of deportation proceedings, this time based upon his conviction in 1938, 1945, and 1949 of the crime of possessing marihuana in violation of §§ 11001, 11160 and 11500 of the California Health and Safety Code. On December 2, 1953, the Board of Immi-

gration Appeals [13] held that plaintiff was not deportable because of these convictions and ordered the 1953 deportation proceedings terminated.

Almost two years later, in 1955, plaintiff filed a petition for naturalization at the Los Angeles office of the Immigration and Naturalization Service.

On July 18, 1956, § 241(a)(11) of the Immigration and Nationality Act of 1952 was amended to declare deportable any alien "who at any time has been convicted of a violation of * * * any law or regulation relating to the illicit possession of * * * narcotic drugs * * *" [70 Stat 575 (1956), 8 U.S.C. §2151(a)(11) (Supp. V, 1958).]

Shortly thereafter, on September 28, 1956, the Immigration and Naturalization Service commenced the deportation proceedings under review in this action by ordering plaintiff to show cause why he should not be deported from the United States by reason of having been convicted in 1938, 1945, and 1949 of unlawful possession of "parts of the plant Cannabis Sativa L. (commonly known as marihuana)" in violation of §§ 11001, 11160 and 11500 of the Health and Safety Code of California.

A hearing was had before a Special Inquiry Officer [8 U.S.C. § 1252(b)], who found plaintiff to be a deportable alien under the above-quoted amendment to § 241(a)(11) of the [14] Immigration and Nationality Act of 1952 [8 U.S.C. § 1251 (a)(11) (Supp. V, 1958)], and on October 19, 1956, ordered him deported. The Board of Immigration Appeals affirmed the order of deportation. And on September 25, 1957, defendant directed

plaintiff to report to the Los Angeles office of the Immigration and Naturalization Service for deportation. This action followed, resulting in administrative suspension of deportation pending judicial review.

Plaintiff advances three grounds in support of his contention that the deportation order of October 19, 1956, is without authority in law and should be declared a nullity:

First, that convictions of unlawful possession of marihuana are not convictions of "illicit possession of narcotic drugs" within the meaning of the 1956 amendment to § 241(a)(11) of the Immigration and Nationality Act of 1952 [8 U.S.C. § 1251(a)(11) (Supp. V, 1958)];

Second, that even if otherwise deportable under the 1956 amendment to § 241(a)(11), plaintiff's deportation is precluded by the existence of a "right in process of acquisition" under his pending petition for naturalization filed in 1955, which right was preserved by the saving clauses set forth in § 405(a) and (b) of the Immigration and Nationality Act of 1952 [66 Stat. 280 (1952), 8 U.S.C. note foll. § 1101; cf. Shomberg v. United States, 348 U.S. 540 (1955)]; and [15]

Third, that in all events plaintiff acquired a "status of non-deportability" by virtue of the administrative decisions dismissing the 1948 and 1953 deportation proceedings against him, and this claimed status was preserved over the 1956 amendment to § 241(a)(11) by the saving clauses in § 405(a) and (b) of the Act. [See Mulcahey v. Catala-

notte, 353 U.S. 692 (1957); cf. Lehmann v. United States ex rel Carson, 353 U.S. 685 (1957).]

Turning to the first contention, plaintiff urges that marihuana is not a "narcotic drug" within the meaning of § 241(a)(11), as amended in 1956, since the Congress, apparently bearing in mind the question whether marihuana possesses the habit-forming qualities of substances generally classified as narcotic drugs, has not seen fit expressly to include marihuana in that category. In this connection it is noted that marihuana was treated separately from "narcotic drugs" in the Narcotic Control Act of 1956 [70 Stat. 567 (1956)], enacted by the same Congress that enacted the 1956 amendment to § 241(a)(11) of the Immigration and Nationality Act of 1952. [See U. S. Code Cong. and Ad. News pp. 3321, 3274-3322 (1956).]

However, it is unnecessary here to reach the problem whether marihuana is a "narcotic drug" within the meaning of § 241(a)(11), for I find, as plaintiff asserts and defendant concedes, that my brother Judge Westover has already explored [16] the question and reached a conclusion which accords with plaintiff's contention here—namely, that marihuana is not a narcotic drug within the meaning of the statute in question. [See Manuel Mendoza-Rivera v. Del Guercio, ... F. Supp. .... (S.D. Cal. 1958), Civil No. 813-57 HW, decided February 24, 1958.]

The Court of Appeals of this Circuit has quoted with approval the proposition stated in Shreve v. Cheesman, 69 Fed. 785, 791 (8th Cir. 1895), cert.

denied, 163 U.S. 704 (1896), that the "various judges who sit in the same court should not attempt to overrule the decisions of each other * * * except for the most cogent reasons." [Carnegie Nat. Bank v. City of Wolf Point, 110 F. 2d 569, 573 (9th Cir. 1940).]

For judges of co-ordinate jurisdiction to presume to overrule one another usually adds only unseemly conflict and confusion where certainty and predictability are most to be desired. The "overruling" decision settles nothing, and more often than not serves only to compound uncertainty as to the correct rule to be followed. The reasons so well put by Judge Sanborn more than a half-century ago in Shreve v. Cheesman, supra, a fortiori apply today. [See 69 Fed. at 790-791; also TCF Film Corp. v. Gourley, 240 F. 2d 711 (3rd Cir. 1957).]

Unless a judge can say that he thinks a decision of [17] a colleague is on the face of it patently erroneous, he should follow it. Especially is this true of decisions in the same case, and of decisions in different cases involving rules of practice and procedure or rules of property or, as here, the status of persons. [Cf.: Dictograph Products Co. v. Sonotone Corp., 230 F. 2d 131 (2d Cir. 1956); TCF Film Corp. v. Gourley, supra, 240 F. 2d 711.]

In the days when Justices of the Supreme Court "rode the circuit" and presided in the trial courts, Mr. Justice Field, sitting as Circuit Justice in the then Circuit Court of the District of Nevada, upon being importuned to dissolve an injunction which

had been issued by the circuit judge, wrote: "I could not with propriety reconsider his decision, even if I differed from him in opinion. The circuit judge possesses * * * equal authority with myself in the Circuit, and it would lead to unseemly conflicts, if the rulings of one judge, upon a question of law, should be disregarded, or be open to review by the other judge in the same case." [Cole Silver Min. Co. v. Virginia & Gold Hill Water Co., 6 Fed. Cas. 72, 74, No. 2990 (C.C.D. Nev. 1871).]

Since I cannot say that on the face of it Judge Westover's conclusion on the question of law now presented appears to me to be patently erroneous, I follow it without further study. Anyone who wishes to challenge that ruling [18] should do so in the Court of Appeals, which was established to correct errors of the Judges of this Court.

What has been said is not to intimate that I tend to disagree with, or even question the soundness of the conclusion Judge Westover has reached, but only to emphasize that, until overruled, I feel in comity bound to follow his ruling on this question of statutory construction, and this without myself re-examining the problem.

However, defendant points to the fact that the decision of my brother Chief Judge Yankwich in United States v. Ford Coupe Automobile, 83 F. Supp. 866 (S.D. Cal. 1949), rules marihuana to be a narcotic drug. This presents a dilemma more

apparent than real, since the decision there does not conflict with that of Judge Westover.

The case before Judge Yankwich involved proceedings to declare the forfeiture of an automobile used in transporting a "contraband article". [See 49 U.S.C. §§ 781-788.] And there the statute, after declaring "contraband article" to include "any narcotic drug", in turn expressly defines "narcotic drug" to include "marihuana". [49 U.S.C. §§ 781, 787(d).]

Inasmuch as plaintiff must prevail on the authority of Judge Westover's holding that the term "narcotic drug", as used in the 1956 amendment to § 241(a)(11) of the Immigration [19] and Nationality Act of 1952, does not include marihuana, it is unnecessary to consider the other grounds urged.

For the reasons stated, plaintiff is entitled to judgment (1) annulling the final order of the Attorney General directing that he be deported from the United States, and (2) permanently enjoining defendant from proceeding with deportation by authority of such order.

The attorneys for plaintiff may serve and lodge with the Clerk within ten days findings of fact, conclusions of law and judgment accordingly, to be settled pursuant to Local Rule 7. [20]

[Endorsed]: Filed April 25, 1958.

United States District Court, Southern District of California, Central Division

No. 1152-57 WM

ARNULFO ROJAS-GUTIERREZ,

Plaintiff,

vs.

RICHARD C. HOY, as District Director of the Immigration and Naturalization Service, Los Angeles, California, Defendant.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND JUDGMENT

Findings of Facts

I.

That on July 18, 1956, Section 241 (a) (11) of the Immigration & Nationality Act of 1952 was amended to declare deportable any alien "who at any time has been convicted of violation * * * any law or regulation relating to the illicit possession of * * * narcotic drugs * * *" (8 U.S.C. 1251) (a) (11).

II.

That on September 28, 1956, the Immigration & Naturalization Service commenced deportation proceedings against the plaintiff by ordering the plaintiff to show cause why he should not be deported from the United States by reason of having been convicted in 1938, 1945, and 1949 of an unlawful possession of "parts of the plant Can-

nabis Sativa (commonly known as marihuana)" in violation of Sections 11001, 11160, and 11500 of the Health and Safety Code of California. [21]

III.

That a hearing was had before a Special Inquiry Officer of the Immigration & Naturalization Service who found plaintiff to be deportable alien under the above quoted amendment to Section 241 (a) (11) of the Immigration & Nationality Act of 1952 (8 U.S.C. 1251) (a) (11), and on October, 1956, ordered him deported; that the Board of Immigration Appeals affirmed the order of deportation; that on September 25, 1957, defendant directed plaintiff to report to the Los Angeles office of the Immigration & Naturalization Service for deportation.

Conclusions of Law

I.

That the term "narcotic drug" as used in a 1956 amendment to Section 241 (11) of the Immigration & Nationality Act of 1952 as amended (8 U.S.C. 1251) (a) (11) does not include marihuana.

II.

That marihuana is not a narcotic drug within the meaning of the statute in question.

III.

That the plaintiff is not deportable under Section

241 (a) (11) of the Immigration & Nationality Act of 1952 as amended (8 U.S.C. 1251) (11).

IV.

That the plaintiff is entitled to judgment annulling the order of deportation issued by a Special Inquiry Officer of the Immigration and Naturalization Service and annulling the order of the Board of Immigration Appeals dated October 19, 1956, affirming the order of deportation of the Special Inquiry Officer.

V.

That plaintiff is entitled to judgment permanently enjoining the defendant from proceeding with the deportation of the plaintiff by authority of such order. [22]

Judgment

In accordance with the foregoing Findings of Facts and Conclusions of Law, It Is Ordered and Adjudged and Decreed:

1. The order of deportation of the Immigration & Naturalization Service, Department of Justice, directing the deportation of the plaintiff Arnulfo Rojas-Gutierrez is hereby set aside and declared null and void and of no effect.

2. The defendant is permanently enjoined from proceeding with the deportation of the plaintiff by authority of such order.

Dated: May 6, 1958.

/s/ WM. C. MATHES,
Judge, U. S. District Court.

Approved as to form:

/s/ MARY G. CREUTZ,
Assistant U. S. Attorney. [23]

[Endorsed]: Filed May 6, 1958. Entered May 7, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF APPEALS, NINTH CIRCUIT

Notice Is Hereby Given that Richard C. Hoy, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on May 7, 1958.

Dated: This 9th day of June, 1958.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
MARY G. CREUTZ,
Assistant U. S. Attorney,
/s/ MARY G. CREUTZ,
Assistant U. S. Attorney,
Attorneys for Defendant. [24]

Affidavit of Service by Mail Attached. [25]

[Endorsed]: Filed June 9, 1958.

[Title of District Court and Cause.]

STIPULATION RE IMMIGRATION FILE NO. A3 548 650 AND ORDER THEREON

It Is Hereby Stipulated by and between counsel for the respective parties hereto that Immigration File No. A3 548 650 admitted in evidence as defendant's Exhibit A, need not be printed in the record on appeal in the above-entitled matter, but may be forwarded to the United States Court of Appeals for the Ninth Circuit in its original form.

Dated: This 1st day of July, 1958.

NEWMAN & NEWMAN,
/s/ By PHILIP M. NEWMAN,
Attorneys for Plaintiff.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
MARY G. CREUTZ,
Assistant U. S. Attorney, [29]
/s/ MARY G. CREUTZ,
Assistant U. S. Attorney,
Attorneys for Defendant.

It Is So Ordered this 1st day of July, 1958.
/s/ WM. C. MATHES,
U. S. District Judge. [30]

[Endorsed]: Filed July 1, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 30, inclusive, containing the original:

Petition for Judicial Review.

Answer.

Memorandum of Decision.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

Stipulation re: Immigration File A3 548 650 & Order thereon.

B. Plaintiff's Exhibit 1.

Defendant's Exhibit A.

I further certify that my fee for preparing the foregoing record, amounting to $1.60, has not been paid by appellant.

Dated: July 18, 1958.

[Seal] JOHN A. CHILDRESS,
Clerk,

/s/ By WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16105. United States Court of Appeals for the Ninth Circuit. Richard C. Hoy, as District Director of the Immigration and Naturalization Service, Los Angeles, California, Appellant, vs. Arnulfo Rojas-Gutierrez, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed and Docketed: July 21, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 16105

RICHARD C. HOY, as District Director of the Immigration and Naturalization Service, Los Angeles, California, Appellant,

vs.

ARNULFO ROJAS-GUTIERREZ, Appellee.

APPELLANT'S STATEMENT OF POINTS ON APPEAL

The appellant hereby designates the following Point on Appeal in the above entitled matter.

I.

Conviction of an alien under California law of unlawful possession of marihuana is a conviction of "illicit possession of * * * narcotic drugs" within the meaning of the 1956 Amendment to Section 241 (a)(11) (8 U.S.C. Sec. 1251(a)(11), Supplement V, 1958) and therefore constitutes a proper ground for deportation thereof.

Dated: This 28th day of July, 1958.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

/s/ MARY G. CREUTZ,
Assistant U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 30, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD TO BE PRINTED

Appellant Hereby Designates the following record to be printed in the above entitled matter:

1. Names and addresses of attorneys.

2. Petition for Judicial Review.
3. Answer.
4. Pre-trial Order (Exhibit 1 in Evidence).
5. Findings of Fact, Conclusions of Law and Judgment.
6. Notice of Appeal.
7. Memorandum of Decision.
8. Designation of Record on Appeal.
9. Stipulation re Immigration File and Order Thereon.
10. Appellant's Statement of Points on Appeal.
11. Appellant's Designation of Record to be Printed.

Counsel for the parties have stipulated that the Exhibits received in evidence might be considered in their original form and need not be printed.

Dated: July 28, 1958.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

/s/ MARY G. CREUTZ,
Assistant U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service By Mail Attached.

[Endorsed]: Filed July 30, 1958. Paul P. O'Brien, Clerk.